

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF MONTANA**

**MISSOULA DIVISION**

**WALTER PESCHEL M.D., and  
PEGGY PESCHEL,**

**Plaintiffs,**

**vs.**

**CITY OF MISSOULA, acting through  
the Missoula Police Department, et al.,**

**Defendants.**

**CV-08-79-M-RFC**

**ORDER ADOPTING FINDINGS  
AND RECOMMENDATIONS OF  
U.S. MAGISTRATE JUDGE**

FILED  
BILLINGS DIV.  
2009 JAN 5 PM 2 33  
PATRICK E. DOWDY, CLERK  
BY \_\_\_\_\_  
DEPUTY CLERK

On December 5, 2008, United States Magistrate Judge Jeremiah Lynch entered his Findings and Recommendation with respect to the Rule 12(b)(6) Fed.R.Civ.P. motion to dismiss (*Doc. 13.*) brought by Defendants City of Missoula, Missoula Police Department, Rusty Wickman, Mark Muir and Gregory Willoughby. *Doc. 72.* Magistrate Judge Lynch recommends the motion be granted as to some claims and denied as to others.

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no party filed objections to the December 5, 2008 Findings and Recommendation. Failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).


After a review of the record and applicable law, this Court finds Magistrate Judge Lynch's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

Accordingly, **IT IS HEREBY ORDERED** that Defendants' Motion to Dismiss (*Doc. 13*) is **GRANTED** as follows:

1. The Peschels' claims against Defendants Wickman, Muir, and Willoughby in their official capacity are dismissed;
2. The Missoula Police Department is dismissed;
3. The Peschels' state law causes of action advanced against Wickman, Muir, and Willoughby are dismissed
4. The Peschels' claims alleging a violation of Mont. Const. Art. II, § 16 are dismissed;
5. The Peschels' independent cause of action for spoliation is dismissed, subject to the Court's possible exercise of its inherent authority to impose sanctions against the City of Missoula for the loss of the video recording; and
6. The Peschels' independent cause of action for "malicious" conduct in their Tenth Cause of Action is dismissed.

Defendants' motion is **DENIED** in all other respects.

DATED the 7<sup>th</sup> day of January, 2009.

  
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RICHARD F. CEBULL  
UNITED STATES DISTRICT JUDGE